IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7088 of 2007()

CRIME NO.740 OF 2007 OF COCHIN HARBOUR POLICE STATION

: PETITIONER

S.BALACHANDRAN, RESIDING AT
"VAISHNAVAM," LANE 24, JANATHA ROAD,
VYTTILA, KOCHI 682 019.

BY ADV. SRI.S.VIDYASAGAR

RESPONDENTS: RESPONDENTS

---

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE
HARBOUR POLICE STATION,
W/ISLAND.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7088 of 2007

Dated this the 28th day of November, 2007

ORDER

Anticipatory bail. The petitioner faces allegations in a crime registered at the Cochin Harbour Police Station as Crime No.740 of 2007 under Section 409 I.P.C. The petitioner is the Assistant Manager of the Kerala State Co-operative Marketing Federation Limited. In such capacity he is in charge of 2 godowns of the Federation - at Wiilingdon Island and at Alangode. The crux of the allegations against the petitioner is that out of a total quantity of 50 tonnes of pepper which was entrusted to the petitioner and which ought to have been available in the godowns only 48 tones were actually available and there was an unexplained shortage of 2 tones of pepper. It is the allegation of the defacto complainant that this difference represents the quantity which has been illicitly siphoned out of the Federation stock by accused persons including the petitioner.

2. There is no dispute that there was shortage of stock of 2 tones. There is no dispute that this is an abnormal shortage. The counsel for the petitioner contends that he has absolutely no

contumacious responsibility for the deficit in the stock. According to the petitioner this deficit/reduction on account of the natural process is beyond the control of the petitioner. The reduction of weight on account of dryage while pepper is stored in the godown is universally accepted. There was some excessive shortage in weight because of the conditions under which the stock was kept in the godown of the Federation. Merely from the fact that there has been a shortage, it would be unkind, harsh and cruel to assume that the petitioner has siphoned out any quantity of the stock entrusted to him. It is, in these circumstances prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The shortage in quantity is too high to be justified by the natural process of drying which can ordinarily take place. At this point of time, the Court is not going to consider all the possible defences of the accused. The needle of suspicion is pointed convincingly to the petitioner who is unable to explain the shortage satisfactorily. The petitioner has to be interrogated. He shall be arrested and taken into custody only if absolutely essential. The

reason for the shortage has to be ascertained from him. He will have to be confronted with all the relevant details. At this stage of investigation, the learned Public Prosecutor submits that it may not be proper, expedient or just to permit the petitioner to arm himself with an order of anticipatory bail and thus deprive the investigating agency of an opportunity to conduct an effective investigation and ascertain the reason for the shortage. The petitioner shall be arrested and kept in custody only if absolutely essential. At any rate the petitioner may not be permitted at this stage to avail the benefit of an order of anticipatory bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am not able to perceive any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner must certainly co-operate with the investigators. He must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-